

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

Docket No. RCRA-07-2003-0100

The Complainant is the Director of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is Clean Harbors Environmental Services, Inc., a company incorporated under the laws of Massachusetts and authorized to conduct business in the State of Nebraska.

The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region VII, by EPA Delegation No. R7-8-009-A, dated June 30, 1997.

The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska (hereinafter Title 128). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Based upon the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, and attached hereto, the Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. These factors include the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

II. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

1. Respondent is a Massachusetts corporation authorized to conduct business in the State of Nebraska and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

2. Respondent operates a commercial hazardous waste incinerator located at 2247 South Highway 71 in Kimball, Nebraska (hereinafter "Facility"). As a result of these activities Respondent treats and stores hazardous waste as defined in Title 128, Chapter 1, Section 055, and Chapters 2 and 3.
3. On or about November 17, 1988, the Nebraska Department of Environmental Quality issued a permit for the treatment and storage of hazardous waste at the Facility to Respondent. Several permit modifications have been approved since this permit was issued. The current permit was renewed on July 30, 1999, and will expire on July 30, 2004.
4. On April 8-10, 2002, EPA conducted a RCRA compliance evaluation inspection at the Facility. A Notice of Violation was issued to Respondent after the April 8-10, 2002, inspection for violations of RCRA. The violations observed during the April 8-10, 2002, inspection form the basis for the allegations below.

COUNT 1
OPEN CONTAINERS

5. Complainant hereby incorporates the allegations contained in paragraphs 1 through 4 above, as if fully set forth herein.
6. Respondent is subject to 40 C.F.R. § 264.173(a), adopted and incorporated by reference at Title 128, Chapter 21, Section 009, which provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
7. Part III.C.3.a. of Respondent's Hazardous Waste Treatment and Storage Facility Permit Number NED981723513 requires that a container holding waste shall always be closed during storage, except when it is necessary to add or remove waste.
8. At the time of the April 8-10, 2002, inspection, EPA observed at least four bins in the Ash Stabilization Building containing hazardous waste ash that were not closed at a time when the facility was not adding or removing waste.
9. Respondent's failure to close the hazardous waste ash containers is a violation of Permit Condition III.C.3.a, and 40 C.F.R. § 264.173(a), adopted and incorporated by reference at Title 128, Chapter 21, Section 009.
10. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$549.00 for the violation set forth in this Count 1.

COUNT 2
STORAGE OF INCOMPATIBLE WASTE

11. Complainant hereby incorporates the allegations contained in paragraphs 1 through 10 as if fully set forth herein.
12. Respondent is subject to 40 C.F.R. § 264.177(c), adopted and incorporated by reference at Title 128, Chapter 21, Section 009, which provides that a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.
13. Parts II.G.1, II.G.2.a., and III.C.5.c. of Respondent's Hazardous Waste Treatment and Storage Facility Permit Number NED981723513 require in pertinent part: (1) that Respondent take precautions to prevent accidental ignition or reaction of ignitable or reactive waste; (2) that Respondent take precautions to prevent reactions which generate extreme heat or pressure, fire or explosion, or violent reactions; and (3) that a storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers and tanks shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.
14. Pursuant to Title 128, Chapter 21, Section 025, adopting and incorporating by reference 40 C.F.R. Part 264, Appendix V, acids and caustics are incompatible because of the potential for heat generation and violent reactions.
15. At the time of the April 8-10, 2002, inspection, EPA observed several incompatible containers of acids and caustics being stored without adequate separation. Specifically, drum numbers 2557448 (D002 acid with a pH of 2), 2518982 (D002/D006/D007/D008 acid with a pH of 0), and 2428034 (D002 base with a pH of 13) were stored on Racks #2 and #3 which share a common sump. In addition, drum numbers 2526787 (D002 acid with a pH of 1), 2500025 (D002 acid with a pH of 1), 2533949 (D002 base with a pH of 13), and 2367420 (D002 base with a pH of 13) were stored on Racks #4 and #5 which share a common sump.
16. Correspondence from Respondent to EPA dated April 24, 2002, indicates that incompatible wastes identified by EPA during the inspection were stored together beginning on January 16, 2002.
17. During a January 22-25, 1996, EPA inspection of Respondent's facility, EPA observed that Respondent was storing hazardous waste acids and halogenated solvents on the same storage rack. According to 40 C.F.R. Part 264, Appendix V, acids and halogenated

solvents are not compatible. A Notice of Violation was issued by EPA to Respondent for this violation on January 25, 1996.

18. During a January 7-8, 1997, EPA inspection of Respondent's facility, EPA observed that Respondent was storing hazardous waste acids and halogenated solvents, as well as halogenated hydrocarbons, on the same storage rack. According to 40 C.F.R. Part 264, Appendix V, acids and halogenated solvents are not compatible. A Notice of Violation was issued by EPA to Respondent for this violation on January 8, 1997.
19. Respondent's failure to properly store incompatible hazardous wastes is a violation of Permit Conditions II.G.1, II.G.2.a., and III.C.5.c. of Respondent's Hazardous Waste Treatment and Storage Facility Permit Number NED981723513, and 40 C.F.R. § 264.177(c), adopted and incorporated by reference at Title 128, Chapter 21, Section 009.
20. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$141,899.00, which includes a gravity-based penalty of \$5,499.00, a multi-day penalty of \$89,100.00, and an upwards adjustment for history of noncompliance and willfulness and/or negligence in the amount of \$47,300.00, for the violation set forth in this Count 2.

COUNT 3
FAILURE TO MINIMIZE THE POSSIBILITY OF RELEASE OF
HAZARDOUS WASTE TO THE ENVIRONMENT

21. Complainant hereby incorporates the allegations contained in paragraphs 1 through 20 as if fully set forth herein.
22. Respondent is subject to 40 C.F.R. § 264.31, adopted and incorporated by reference at Title 128, Chapter 21, Section 003, which provides that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
23. Part IIA of Respondent's Hazardous Waste Treatment and Storage Facility Permit Number NED981723513 requires in pertinent part that Respondent shall maintain, and operate the facility as specified in the Permit and in Respondent's Permit application in a manner to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, surface or subsurface water which could threaten human health or the environment.

24. At the time of the April 8-10, 2002, inspection, EPA observed hazardous waste ash on the floor and on equipment in the Ash Stabilization Building. In addition, EPA observed areas where hazardous waste ash was tracked by facility equipment through the Ash Stabilization Building doors into the environment.
25. At the time of the April 8-10, 2002, inspection, EPA observed releases of hazardous waste feed to the Facility's Thermal Oxidation Unit on a metal lip below the access door at the top of the hazardous waste solids feed conveyor.
26. On November 3, 2000, the Nebraska Department of Environmental Quality issued a Letter of Warning to Respondent which cited Respondent's failure to maintain the dry solids feed system to prevent fugitive emissions.
27. Respondent's failure to minimize releases of the hazardous waste ash and hazardous waste feed is a violation of Permit Condition II.A, and 40 C.F.R. § 264.31, adopted and incorporated by reference at Title 128, Chapter 21, Section 003.
28. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$25,079.00, which includes a gravity-based penalty of \$8,799.00, a multiple-day penalty of \$8,799.00, an upwards adjustment for history of noncompliance in the amount of \$4,400.00, and economic benefit of noncompliance in the amount of \$3,081.00, for the violation set forth in this Count 3.

COUNT 4

FAILURE TO LABEL EQUIPMENT IN HAZARDOUS WASTE SERVICE

29. Complainant hereby incorporates the allegations contained in paragraphs 1 through 28 above, as if fully set forth herein.
30. Respondent is subject to 40 C.F.R. § 264.1050(d), adopted and incorporated by reference at Title 128, Chapter 21, Section 020, which provides that each piece of equipment subject to 40 C.F.R. Subpart BB shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.
31. Part VI.D.2 of Respondent's Hazardous Waste Treatment and Storage Facility Permit Number NED981723513 requires that Respondent comply with all applicable requirements of the regulations regarding organic vapor emissions from equipment leaks, as referenced by Title 128, Chapter 21, Section 020, and as described in 40 C.F.R. Subpart BB.

32. At the time of the April 8-10, 2002, inspection, EPA observed four pieces of equipment on Tank #T-108 in the Tank Farm that were not marked. These four pieces of equipment are subject to regulation pursuant to 40 C.F.R. Subpart BB.
33. Respondent indicated in correspondence to EPA dated April 24, 2002, that the markings identifying the four pieces of equipment on Tank #T-108 observed by EPA during the inspection as Subpart BB equipment were removed in late winter 2002.
34. Respondent's failure to mark the four pieces of equipment subject to regulation pursuant to 40 C.F.R. Subpart BB is a violation of Permit Condition VI.D.2, and 40 C.F.R. § 264.1050(d), adopted and incorporated by reference at Title 128, Chapter 21, Section 020.
35. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and based upon the allegations contained above, it is proposed that Respondent be assessed a civil penalty of \$2,639.00, which includes a gravity-based penalty of \$549 and a multi-day penalty of \$2,090.00, for the violation set forth in this Count 4.

III. COMPLIANCE ORDER

IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, Respondent shall pay a penalty of \$170,166.00. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251. A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Edwin G. Buckner, P.E.
Environmental Engineer
ARTD/RESP
U.S. EPA Region VII
901 N. 5th St.
Kansas City, Kansas 66101

The check must reference the EPA Docket Number of this Complaint and Respondent by name.

IT IS FURTHER ORDERED that within thirty (30) days of receipt of this Order, Respondent shall submit to EPA for review and approval a Compliance Plan describing all actions taken and/or planned by Respondent to ensure compliance with the following provisions of RCRA, Title 128, and Respondent's Hazardous Waste Treatment and Storage Facility Permit Number NED981723513 that are the subject of this Complaint:

- (1) Part III.C.3.a. of Permit Number NED981723513 and 40 C.F.R. § 264.173(a), adopted and incorporated by reference at Title 128, Chapter 21, Section 009.
- (2) Parts II.G.1., II.G.2.a., and III.C.5.c. of Permit Number NED981723513 and 40 C.F.R. § 264.177(c), adopted and incorporated by reference at Title 128, Chapter 21, Section 009.
- (3) Part II.A. of Permit Number NED981723513 and 40 C.F.R. § 264.31, adopted and incorporated by reference at Title 128, Chapter 21, Section 003.
- (4) Part VI.D.2. of Permit Number NED981723513 and 40 C.F.R. § 264.1050(d), adopted and incorporated by reference at Title 128, Chapter 21, Section 020.

If EPA disapproves of Respondent's Compliance Plan in whole or in part, Respondent shall correct the deficiencies and resubmit the Compliance Plan within the timeframe specified by EPA. In the event the resubmitted Compliance Plan is disapproved by EPA, Respondent shall be deemed to have failed to submit the Compliance Plan in violation of this Order. If EPA approves the Compliance Plan, Respondent shall implement the Compliance Plan in accordance with the schedule therein.

Within one year of EPA's approval of Respondent's Compliance Plan, Respondent shall submit a Compliance Report to EPA for review and approval demonstrating Respondent's continuous compliance throughout the preceding year with the Compliance Plan and the provisions of RCRA, Title 128, and Respondent's Hazardous Waste Treatment and Storage Facility Permit Number NED981723513 that are the subject of this Complaint. If EPA disapproves of Respondent's Compliance Report in whole or in part, Respondent shall correct the deficiencies and resubmit the Compliance Report within the timeframe specified by EPA. In the event the resubmitted Compliance Report is disapproved by EPA, Respondent shall be deemed to have failed to submit the Compliance Report in violation of this Order.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) the Compliance Order shall become final unless Respondent files an answer and requests a public hearing in writing no later than thirty (30) days after service of the Complaint.

A written answer to the Complaint must satisfy the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA, Region VII, 901 N. 5th St., Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Alyse Stoy, Office of Regional Counsel, at the same address.

Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

The proposed penalty as set forth in the Complaint was developed based on the best available information at the time of issuance of this Complaint, and may be adjusted if the Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty. In accordance with the RCRA Civil Penalty Policy, EPA prepared a penalty calculation summary explaining the reasoning behind the penalty proposed for the violation(s) alleged herein. The summary provided is an attachment to this Complaint and is adopted and incorporated by reference as if herein set forth.

V. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Alyse Stoy, Office of Regional Counsel, U.S. EPA, Region VII, 901 N. 5th St., Kansas City, Kansas 66101, (913) 551-7826.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order which may be issued by the Regional Judicial Officer, EPA Region VII.

If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this Complaint, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered without further proceedings and Respondent will be notified that the penalties have become due and payable.

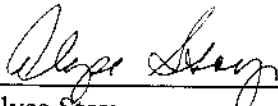
VI. EFFECTIVE DATE

This Complaint, Compliance Order, and Notice of Opportunity for Hearing shall become effective on the date signed by the Director, Air, RCRA and Toxics Division, EPA Region VII.

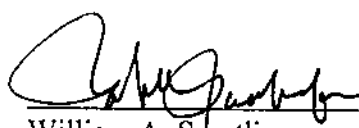
This Order shall only be terminated upon receipt of written notice from EPA that all requirements herein have been satisfied.

IT IS SO ISSUED AND ORDERED:

3/26/03
Date


Alyse Stoy
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

3-27-03
Date


William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region VII

Attachments: Penalty Calculation Summary
Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits
RCRA Civil Penalty Policy (October 26, 1990)
Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand-delivered the original and one true copy of this Complaint, Compliance Order and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint, Compliance Order and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22; a copy of the RCRA Civil Penalty Policy (October 26, 1990); and a copy of the Civil Penalty Calculation Summary; and a copy of the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings to the following registered agent for Clean Harbors Environmental Services, Inc.:

CT Corporation System
Suite 500
301 South 13th Street
Lincoln, Nebraska 68508

Dated this 28th day of March, 2003.

Diana Whitaker
Name

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Tot	CT Corporation System
Sen	RCRA-07-2003-0100
Street or P.O.	Clean Harbors Environmental Services
City	301 South 13 th Street, Suite 500
	Lincoln, NE 68508

PS Form 3800, April 2002 See Reverse for Instructions

MAR 28 2003
Postmark
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CIVIL PENALTY COMPUTATION SUMMARY

Company Name: Clean Harbors Environmental Services, Inc.
Address: 2247 South Highway 71, Kimball, Nebraska 69145
RCRIS ID: NED981723513

COUNT 1: Open Containers

Penalty Amount for Complaint

1.	Gravity Based Matrix Value	\$549
	(a) Potential for Harm	Minor
	(b) Extent of Deviation	Minor
2.	Multi-day component	\$0
3.	Adjustment Factors	
	(a) Good Faith	0%
	(b) Willfulness/Negligence	0%
	(c) History of Noncompliance	0%
	Amount of Penalty Change	\$0
4.	Economic Benefit	\$0
5.	Count 1: Penalty Amount for Complaint	\$549

COUNT 2: Incompatible Waste Storage

Penalty Amount for Complaint

1.	Gravity Based Matrix Value	\$5499
	(a) Potential for Harm	Moderate
	(b) Extent of Deviation	Minor
2.	Multi-day component	
	Multi-day Matrix Value	\$1,100
	Potential for Harm	Moderate
	Extent of Deviation	Minor
	Days of noncompliance	82
	Multi-day Total (\$1,100 x 81)	
3.	Adjustment Factors	
	(a) Good Faith	0%
	(b) Willfulness/Negligence	25%
	(c) History of Noncompliance	25%
	Amount of Penalty Change	\$47,300
4.	Economic Benefit	\$0
5.	Penalty Amount for Complaint	\$141,899

COUNT 3: Failure to Minimize Possibility of Release of Hazardous Waste to Environment**Penalty Amount for Complaint**

1.	Gravity Based Matrix Value	\$8,799
	(a) Potential for Harm	Moderate
	(b) Extent of Deviation	Moderate
2.	Multiple Day component	\$8,799
	Potential for Harm	Moderate
	Extent of Deviation	Moderate
	Days of noncompliance	1
	Multiple Day Total (\$8,799 x 1)	\$8,799
3.	Adjustment Factors	
	(a) Good Faith	0%
	(b) Willfulness/Negligence	0%
	(c) History of Noncompliance	25%
	Amount of Penalty Change	\$4,400
4.	Economic Benefit	\$3,081
5.	Penalty Amount for Complaint	\$25,079

COUNT 4: Failure to Label Equipment in Hazardous Waste Service**Penalty Amount for Complaint**

1.	Gravity Based Matrix Value	\$549
	(a) Potential for Harm	Minor
	(b) Extent of Deviation	Minor
2.	Multi-day component	
	Multi-day Matrix Value	\$110
	Potential for Harm	Minor
	Extent of Deviation	Minor
	Days of noncompliance	19
	Multi-day Total (\$110 x 19)	\$2,090
3.	Adjustment Factors	
	(a) Good Faith	0%
	(b) Willfulness/Negligence	0%
	(c) History of Noncompliance	0%
	Amount of Penalty Change	\$0
4.	Economic Benefit	\$0
5.	Penalty Amount for Complaint	\$2,639

TOTAL PENALTY AMOUNT:

Count 1:	\$549
Count 2:	\$141,899
Count 3:	\$25,079
Count 4:	<u>\$2,639</u>
	\$170,166